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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/501,251 | 02/10/2000 | Josef Theurer | THEURER-21 | 3590 |

20151 7590 12/28/2001

HENRY M FEIEREISEN
350 FIFTH AVENUE
SUITE 3220
NEW YORK, NY 10118

EXAMINER

WEST, JEFFREY R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2857

DATE MAILED: 12/28/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/501,251

Applicant(s) *hec*

THEURER ET AL.

Examiner

Jeffrey R. West

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: _____

DETAILED ACTION

Specification

1. Claim 2 is objected to because of the following informalities:

Claim 2 describes the step of "repeating steps d) and e) until the first measuring vehicle is in close proximity to the second measuring vehicle". However, in the claim, there are no steps labeled "d)" and "e)". Appropriate labeling of the steps is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,493,499 to Theurer et al.

Theurer describes a method of surveying a track (column 5, lines 62-66) comprising the steps of positioning a first and second measuring vehicle, the first measuring vehicle designed for mobility independent of the second stationary vehicle (column 4, lines 40-43), at end points of a track section to be measured (column 4, lines 15-18), determining the position coordinates of the second vehicle at the start of each measuring cycle with the aid of a GPS receiver relative to a fixed GPS reference, being known within a terrestrial coordinate system, located adjacent

Art Unit: 2857

to the track section (column 4, lines 24-34), and setting up a reference line in the form of an optical measuring beam between an emitter mounted on the second measuring vehicle and a receiving unit mounted on the first measuring vehicle (column 7, lines 23-31). Further, Theurer describes the steps of aligning the reference line with the first measuring vehicle on the basis of the determined position data (columns 5-6, lines 66-9), advancing the first measuring vehicle in the direction towards the second, stationary vehicle, by a predetermined distance and determining a displacement of the optical reference line perpendicular to a track direction, determining an absolute track location, as well as registering as a correction measurement value any change in position of the receiving unit mounted on the first measuring vehicle relative to the reference line (column 6, lines 30-34 and 50-56). Theurer also describes the process of repeating the movement and measurement steps until the first measuring vehicle is in close proximity to the second measuring vehicle, thereby surveying the track between the two end points (column 2, lines 1-8).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent No. 6,119,353 to Gronskov teaches a method and apparatus for non-contact measuring of the deflection of roads or rails.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. West whose telephone number is (703)308-1309. The examiner can normally be reached on Monday thru Friday, 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S. Hoff can be reached on (703)308-1677. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7382 for regular communications and (703)308-7382 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

jrww
December 21, 2001


MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800